

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

*
Cecil Stephens, et al.
Plaintiffs, * ASBESTOS CASES
vs. * Case No. 99-4868, et al.
AP Green Services, et al. * OPINION AND JUDGMENT ENTRY
Defendants. * Hon. Robert V. Franklin
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99-4868	Cecil Stephens vs. AP Green Services, et al.	Doneghy
99-4869	Donald Wilkerson vs. AP Green Services, et al.	Wittenberg
99-4870	Robert Dobbs vs. AP Green Services, et al.	Franks
99-4871	Howard Heard vs. AP Green Services, et al.	Christiansen
99-4872	Revard Anderson vs. AP Green Services, et al.	Lanzinger
99-4873	William Hackett vs. AP Green Services, et al.	Bowman
99-4874	Hansel Brown vs. AP Green Services, et al.	Bates
99-4875	Freddie Minshew vs. AP Green Services, et al.	Franks
99-4877	Ersline O. Bowers vs. AP Green Services, et al.	Bates
99-4878	Arvel Chamblee vs. AP Green Services, et al.	Christiansen
99-4879	William Sweeney vs. AP Green Services, et al.	Lanzinger
99-4880	Johnnie Quinzy vs. AP Green Services, et al.	Wittenberg
99-4881	Donald Kenum vs. AP Green Services, et al.	Skow
99-4882	Henry Hemrick vs. AP Green Services, et al.	Doneghy
99-4884	Boyd McLendon vs. AP Green Services, et al.	Wittenberg
99-4887	Horace Noah vs. AP Green Services, et al.	Skow
99-4888	John Stallings vs. AP Green Services, et al.	Bates
99-4890	David Porter vs. AP Green Services, et al.	McDonald
99-4891	James White vs. AP Green Services, et al.	Christiansen
99-4892	Johnny Burke vs. AP Green Services, et al.	Franks
99-4893	David Cannon vs. AP Green Services, et al.	Franks
99-4895	James Joshua vs. AP Green Services, et al.	Doneghy
99-4896	John Ford vs. AP Green Services, et al.	Jensen
99-4897	Clarence Cryar vs. AP Green Services, et al.	McDonald
99-4898	Willie Nichols vs. AP Green Services, et al.	Bates
99-4899	Joseph Daniel vs. AP Green Services, et al.	McDonald
99-4900	Freddy Keener vs. AP Green Services, et al.	Skow
99-4901	Henry Posey vs. AP Green Services, et al.	Jensen
99-4902	Bobby Farmer vs. AP Green Services, et al.	Bowman
99-4903	Bobby Gidley vs. AP Green Services, et al.	Bates
99-4904	Gerald Teat vs. AP Green Services, et al.	Franks

99-4905	Howard George vs. AP Green Services, et al.	Bates
99-4906	Ronald Patrick vs. AP Green Services, et al.	Wittenberg
99-4907	Troy Brown vs. AP Green Services, et al.	Bowman
99-4908	Billy Clough vs. AP Green Services, et al.	Lanzinger
99-4909	Melinee Dean vs. AP Green Services, et al.	Christiansen
99-4910	Marvin Woodall vs. AP Green Services, et al.	Jensen
99-4911	D.W. Howard vs. AP Green Services, et al.	McDonald
99-4912	Willie Nunn vs. AP Green Services, et al.	Doneghy
99-4913	Floyd Morgan vs. AP Green Services, et al.	Lanzinger
99-4914	James T. Cox vs. AP Green Services, et al.	Doneghy
99-4915	Johnny Rhodes vs. AP Green Services, et al.	Skow
99-4924	Donald Saxon vs. AP Green Services, et al.	Wittenberg
99-4926	Grady Elkins vs. AP Green Services, et al.	Bates
99-4928	Gerald Penny vs. AP Green Services, et al.	Skow
99-4935	Charles Amberson vs. AP Green Services, et al.	Bowman
99-4936	William Barnes vs. AP Green Services, et al.	Skow
99-4937	Mason Copeland vs. AP Green Services, et al.	Franks
99-4938	Charles Mintz vs. AP Green Services, et al.	Christiansen
99-4939	James Thompson vs. AP Green Services, et al.	Doneghy
99-4940	Ernest Barnett vs. AP Green Services, et al.	Wittenberg
99-4941	Millard Hale vs. AP Green Services, et al.	Lanzinger
99-4942	George Powell vs. AP Green Services, et al.	Franks
99-4944	Jack White vs. AP Green Services, et al.	Jensen
99-4945	Bobby Nunnally vs. AP Green Services, et al.	Lanzinger
99-4946	Odie Stephens vs. AP Green Services, et al.	Christiansen
99-4948	Thomas Brooks vs. AP Green Services, et al.	Franks
99-4951	Russell Faulkner vs. AP Green Services, et al.	Doneghy
99-4952	Reste Lindsey vs. AP Green Services, et al.	Bowman
99-4953	Loyd Henderson vs. AP Green Services, et al.	Skow
99-4956	Paul Allen vs. AP Green Services, et al.	Christiansen
99-4957	Calvin Duke vs. AP Green Services, et al.	Jensen
99-4960	Thomas Killian vs. AP Green Services, et al.	Christiansen
99-4961	Mickey Busby vs. AP Green Services, et al.	Bates
99-4962	Arthur Brothers vs. AP Green Services, et al.	Skow
99-5020	James E. Smith vs. AP Green Services, et al.	Doneghy
99-5021	James Bradley vs. AP Green Services, et al.	McDonald
99-5022	Hasker Threatt vs. AP Green Services, et al.	Franks
99-5023	Mary E. Cox vs. AP Green Services, et al.	Christiansen
99-5024	Dorothy King vs. AP Green Services, et al.	Bates
99-5025	Gerald Minshew vs. AP Green Services, et al.	Franks
99-5029	Edward Byers vs. AP Green Services, et al.	Jensen
99-5030	Jesse Story vs. AP Green Services, et al.	Bates
99-5032	Howard Cagle vs. AP Green Services, et al.	Wittenberg
99-5035	Glenn Brothers vs. AP Green Services, et al.	Bowman
99-5036	Allan Vickery vs. AP Green Services, et al.	Lanzinger
99-5037	Alfred Vaughn vs. AP Green Services, et al.	Skow
99-5038	Henry Turner vs. AP Green Services, et al.	Lanzinger
99-5039	Gerald Little vs. AP Green Services, et al.	Bates
99-5041	Windell Bush vs. AP Green Services, et al.	Christiansen
99-5054	Dafford Brewster vs. AP Green Services, et al.	Lanzinger
99-5057	Eugene Kinney vs. AP Green Services, et al.	Skow

99-5058	Willis Norton vs. AP Green Services, et al.	McDonald
99-5059	James Parker vs. AP Green Services, et al.	Christiansen
99-5060	Harry Quinn vs. AP Green Services, et al.	Lanzinger
99-5061	Walter Watts vs. AP Green Services, et al.	Doneghy
99-5068	Thomas Hines vs. AP Green Services, et al.	Bowman
99-5071	James Tilley vs. AP Green Services, et al.	Bates
99-5077	Melvin Barnes vs. AP Green Services, et al.	Franks
99-5079	Jack Thomas, Jr. vs. AP Green Services, et al.	McDonald
99-5080	Richard D. Sisco vs. AP Green Services, et al.	Skow
99-5083	Eddie B. Simms vs. AP Green Services, et al.	Bowman
99-5090	Mickey Williams vs. AP Green Services, et al.	Jensen
99-5092	Mary L. Johnson vs. AP Green Services, et al.	Lanzinger
99-5093	Ernest Marbuary vs. AP Green Services, et al.	Bates
99-5094	C.V. Chappell vs. AP Green Services, et al.	Jensen
99-5095	Raymond Pierce vs. AP Green Services, et al.	Franks
99-5096	Ralph Rowe vs. AP Green Services, et al.	Christiansen
99-5097	Robert Gordon vs. AP Green Services, et al.	Bates
99-5098	Ruby Taylor vs. AP Green Services, et al.	Bowman
99-5099	Jack Leftwich vs. AP Green Services, et al.	McDonald
99-5100	Walter B. Hall vs. AP Green Services, et al.	Christiansen
99-5101	Robert Vick vs. AP Green Services, et al.	Doneghy
99-5102	Shelly Veasy vs. AP Green Services, et al.	Lanzinger
99-5103	Samuel Byers vs. AP Green Services, et al.	Doneghy
99-5104	Joe Howard vs. AP Green Services, et al.	Bowman
99-5105	Harriel Bryant vs. AP Green Services, et al.	Skow
99-5106	Willie J. Sayles vs. AP Green Services, et al.	McDonald
99-5107	Adrian Simpson vs. AP Green Services, et al.	Franks
99-5108	Grady Hale vs. AP Green Services, et al.	Skow
99-5109	William Reed vs. AP Green Services, et al.	Christiansen
99-5110	Joe Reynolds vs. AP Green Services, et al.	Franks
99-5111	James M. Scott vs. AP Green Services, et al.	Franks
99-5112	Jimmy Leftwich vs. AP Green Services, et al.	Skow
99-5113	Percy Petty vs. AP Green Services, et al.	Lanzinger
99-5114	William Anderson vs. AP Green Services, et al.	Bowman
99-5115	William Hicks vs. AP Green Services, et al.	Bates
99-5116	John Smith vs. AP Green Services, et al.	Jensen
99-5117	Hershel Lister vs. AP Green Services, et al.	Bates
99-5118	Ellis Christian vs. AP Green Services, et al.	Wittenberg
99-5119	Euil Roberson vs. AP Green Services, et al.	Jensen
99-5120	Billy Johnson vs. AP Green Services, et al.	Skow
99-5121	H.W. Rigsby vs. AP Green Services, et al.	Bowman
00-2770	Zoul vs. AP Green Services, et al.	Jensen
00-2826	Bowles vs. AP Green Services, et al.	Lanzinger
00-3124	Maiorano vs. AP Green Services, et al.	Skow
00-3563	Bunden vs. AP Green Services, et al.	Christiansen
00-3654	Bunch vs. AP Green Services, et al.	Wittenberg
00-4299	Teeple vs. AP Green Services, et al.	Bowman
00-4300	Colins, Jr. vs. AP Green Services, et al.	Doneghy
00-4929	Bailey vs. AP Green Services, et al.	Franks
00-4930	John Ramey vs. AP Green Services, et al.	Wittenberg

These asbestos cases are before the Court on the plaintiffs' Civ.R. 60(B) motions in which they seek to set aside a portion of this Court's Opinion and Judgment Entry, filed on or about January 29, 2001, ordering a stay ("the stay order"). Upon review of the pleadings, record, memoranda, and applicable law, the Court finds that it should grant the motions and, thus, set aside in part the stay entered in this case.

In the Fall of 2000, defendants Owens Corning, Fiberboard Corporation, Nitram Liquidators, Inc., Desseaux Corporation of North America, and Armstrong World Industries, Inc. (collectively referred to herein as "the debtor defendants") submitted notice-of-bankruptcy filings to the Court. The debtor defendants had filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of Delaware. Pursuant to the automatic stay provisions of Section 362(a), Title 11, United States Code, this Court stayed the instant cases in their entirety -- as against the debtor-defendants and all other non-debtor defendants. See In re: United Health Care Org. (S.D.N.Y.1997), 210 B.R. 228, 232 ("several courts have held that under specific circumstances non-debtors may be protected by the automatic stay * * * if it

contributes to the debtor's efforts to achieve rehabilitation" [citation omitted]).

In their motions for relief, the plaintiffs contend that their interests in having their day in court strongly favor vacating the stay as to the non-debtor defendants.

"To prevail on a motion brought under Civ. R. 60(B), the movant must demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ. R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ. R. 60(B)(1), (2) or (3), not more than one year after the judgment, order or proceeding was entered or taken." (Emphasis added.) GTE Automatic Electric v. ARC Industries (1976), 47 Ohio St.2d 146, paragraph two of the syllabus. Taking these elements in reverse order, the Court finds that the motions were made within a reasonable time (as they were filed within one month of the stay order), and that the motions implicate grounds for relief stated in Civ.R. 60(B)(1) and/or 60(B)(5).¹ The remaining element to determine is whether the

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In relevant part the rule reads as follows:

"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final

plaintiffs have a "meritorious" argument in opposing the stay
(as to the non-debtor defendants).

judgment, order or proceeding for the following reasons: (1)
mistake, inadvertence, surprise or excusable neglect; * * * or
(5) any other reason justifying relief from the judgment. * * *
."

As a general rule, an automatic bankruptcy stay, pursuant to Section 362(a), Title 11, United States Code, is not applicable to non-bankrupt parties. Terry v. SMJ Growth Corp. (Mar. 2, 2000), Cuyahoga App. No. 76083, 2000 Ohio App. Lexis 754, unreported, *3; Cardinal Federal S. & L. Assn. v. Flugum (1983), 10 Ohio App.3d 243, 245. The federal courts regularly apply this general rule in asbestosis cases. See Lynch v. Johns-Manville Sales Corp. (C.A.6, 1983), 710 F.2d 1194, 1197-1198; Pitts v. Unarco (C.A.7, 1983), 698 F.2d 313, 314. Additionally, while courts have "inherent" equitable power to stay proceedings, pursuant Section 105, Title 11, United States Code, due to the bankruptcy of a party,² courts should only grant discretionary stays when a balancing of the interests mandate a stay. Lynch v. Johns-Manville Sales Corp., 710 F.2d at 1199. In Lynch, the non-bankrupt defendants argued that they should not be required to go forward because of the burden of "multiple and piecemeal litigation." However, the Lynch court stated as follows:

"Confronting these arguments, it is initially observed that any duplicative or multiple litigation which may occur is a

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See In re: United Health Care Org., 210 B.R. at 232 (citing Section 105, Title 11, United States Code which grants such powers to federal courts addressing bankruptcy issues).

direct by-product of bankruptcy law. As such, the duplication, to the extent that it may exist, is congressionally created and sanctioned. More importantly, however, any benefits which may derive to the solvent co-defendants from a stay are clearly outweighed by the countervailing interests of the plaintiffs. As the First Circuit has cogently observed:

"In a number of those [asbestos] cases, plaintiffs and crucial witnesses are dying.

We are not persuaded that the hardship to defendants of having to go forward on this appeal without Unarco, or the interests of judicial economy in avoiding relitigation of the issues, are strong enough to justify forcing plaintiff and a number of other plaintiffs to wait until bankrupt defendants are successfully reorganized in order to be able to pursue their claims.' * * *."
(Citation omitted; emphasis added.) Id.

In opposition to the motion for relief from stay, non-debtor defendant Owens-Illinois ("O-I") asserts the Court properly analyzed the facts and accurately applied the relevant law when the Court issued the stay order. In additional support, O-I cites In re. Dow Corning Corp. (C.A.6, 1996), 86 F.3d 482, 494. In that case, the Sixth Circuit ordered all silicone-breast-implant cases transferred to one United States District Court indicating that the district court had "related to" jurisdiction over all cases pending against even non-debtor breast-implant manufacturing defendants. However, the Dow Corning case is properly distinguishable because it involved the

fixing of venue in a breast-implant case and, more importantly, because the court did not weigh the interests of the injured plaintiffs as did the Lynch and other asbestosis courts.

The Court also finds that In re: United Health Care Org., 210 B.R. 228, is properly distinguishable, even though that non-asbestosis case was not cited by O-I. In United Health, the court permitted a stay as to non-debtor co-defendants who were principals in a bankrupt health care organization; the court did this in order to allow the non-debtors to obtain financing so that they could reorganize the debtor health care entity. Id. at 234-235. Thus, unlike the interests of the plaintiffs in the instant cases, the interests of the creditors in United Health were furthered by a total stay.

Based on the foregoing, the Court finds that the non-debtor defendants in the instant cases are not entitled to either an automatic stay or a discretionary stay. Accordingly, the Court also finds that the plaintiffs have established meritorious reasons justifying relief from the stay order in these cases -- the plaintiffs should be entitled to proceed against the non-debtor defendants. Thus, the Court will grant a partial relief from the stay order. These cases will be

reinstated as against all of the defendants except those five defendants about which the Court has received notice of bankruptcy proceedings and any other defendants that have since sought protection of the federal bankruptcy laws.

JUDGMENT ENTRY

It is ORDERED that the plaintiffs' Civ.R. 60(B) motion for a partial relief from this Court's stay order, entered on or about January 29, 2001, is granted. It is further ORDERED that these cases are reinstated as against all of the defendants except those five defendants about which the Court has received notice of bankruptcy proceedings and any other defendants that have since sought protection under the federal bankruptcy laws.

The ten individual judges on the General Division bench concur in this entry. See Addendum.

July ____, 2001

Robert V. Franklin, Judge

ADDENDUM

We concur in the foregoing Opinion and Judgment Entry.

Judge William J. Skow

Judge Robert G. Christiansen

Judge Charles J. Doneghy

Judge Ruth Ann Franks

Judge Judith Ann Lanzinger

Judge James D. Bates

Judge Frederick H. McDonald

Judge Charles S. Wittenberg

Judge J. Ronald Bowman

Judge James D. Jensen

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